

## **PROFESSIONAL SERVICES AGREEMENT**

### **I. NAME OF PARTIES OF THE AGREEMENT**

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Ankeny, Iowa, a municipal corporation, hereinafter called "CITY" or "OWNER" and Snyder & Associates, Inc., 2727 SW Snyder Boulevard, Ankeny, Iowa, a corporation, hereinafter called "ENGINEER" as follows:

### **II. NAME OF PROFESSIONAL SERVICE**

The CITY shall retain the ENGINEER to complete Professional Services for wetland delineation, preliminary design, final design of construction plans and specifications, contract documents, and construction services to include staking, observation and administration, for the 4-Mile Creek Greenway Trail, Ankeny Phase 1 Segment hereinafter called the "PROJECT".

#### **A. ASSIGNMENT OF PROJECT DIRECTOR**

The ENGINEER shall assign Richard M. Voelker, P.E. to direct the PROJECT described in this Agreement.

#### **B. CHANGES IN PROJECT DIRECTOR**

The CITY has the right to approve or disapprove any proposed change from the individual named in Article II(A). The CITY shall be provided with a resume of any proposed substitute and shall be given the opportunity to interview that person prior to its decision to approve or disapprove.

### **III. SCOPE OF WORK**

#### **A. GENERAL**

The ENGINEER shall provide Professional Services as required to complete the preparation and assembly of the PROJECT as named in Article II and as described hereinafter as follows:

1. The PROJECT includes the design and construction of a recreational trail along the former Chicago & Northwestern Railroad grade from NE 54<sup>th</sup> Street, south approximately 5,555' and then east to the intersection of NE 22<sup>nd</sup> Street and NE 62<sup>nd</sup> Avenue. The proposed trail will be five inch thick portland cement concrete pavement, ten feet in width. The intent is to construct the trail within existing right of way plus one additional easement.

2. The ENGINEER will complete preliminary survey, design plans and specifications, construction documents, bid letting assistance, construction staking, administration and observation, and final acceptance for the proposed PROJECT.
3. The ENGINEER will review future phases of the proposed alignment to verify the presence of adequate and functional right of way. Any additional right of way needs observed will be documented and reported to the CITY for further action. The ENGINEER will also review the future phases for the presence of wetlands. Located wetlands shall be delineated and options for avoidance will be reviewed and reported to the CITY for consideration.

#### B. BASIC ENGINEERING SERVICES

The ENGINEER will provide the Basic Engineering Services as follows. Compensation shall be made as specified in Article VI of this Agreement.

##### 1. PROJECT ADMINISTRATION

The ENGINEER shall perform the following administrative services during the design of the PROJECTS:

- a. Monthly progress reports to the CITY.
- b. Monthly billing reports.
- c. Project coordination for engineering and coordination with the CITY, property owners and Utility Companies.
- d. Project design review with the CITY, as needed.
- e. Miscellaneous meetings to review progress and attend informal meetings, Council meetings and Public Hearings.

##### 2. SURVEY AND BASE DRAWINGS

The ENGINEER shall complete the following:

- a. Topographic Survey
  1. Site Features - A topographic field survey will be performed of the above ground physical features including pavements, trees, utility appurtenances etc. within the limits of the PROJECT. A survey corridor within and adjacent to the existing roadway right-of-way will be obtained.

2. Utilities - The utility portion of the survey shall be created using the field survey and information as provided to The ENGINEER from the utility owners by either existing records and or physical field locates. The ENGINEER shall make a diligent attempt to make an accurate representation of underground utilities, vaults and related items but no guarantee can be made as to the condition or location horizontally or vertically between each structure. This portion of the topographic survey would constitute a level "C" utility survey as outlined by the Subsurface Utility Engineering profession. Additional work may be required to upgrade to level "B" or better during advanced states of design and that work would be considered extra services as outlined in Section III.E - Extra Services.
- b. Boundary Survey
    1. Survey will establish current right-of-way, property corners and property lines. This information may be used to develop and prepare individual right-of-way plats and legal descriptions for the PROJECT, if needed.
  - c. Project Base Map Preparation
    1. Coordinate System - The coordinate system that will be used will be based upon the Polk County Coordinate System both vertically and horizontally. Vertical Datum will be NAVD 88.
  - d. Create Digital Terrain Model
    1. Create break lines - control of creation of contours in areas of edges of pavement, drainageways, structures, etc.
    2. Load spot elevations and break lines to build the digital terrain model.
    3. Surface display - intelligent contours.
    4. Surface evaluation and modification to approximate known existing conditions.
    5. Input horizontal and vertical alignment.
    6. Create plan and profiles, and cross sections (11"x17") of existing terrain that allows the use of GeoPak for design.



### 3. PRELIMINARY DESIGN

#### a. Research and Data Collection

1. Background Data Collection. The ENGINEER will research and obtain the data from prior plans, current and recent studies as well as recent construction in proximity to the project.
2. Utility Research and Coordination. The ENGINEER will perform necessary research to gather appropriate information on existing utilities in the project areas. In addition, inquiries shall be made regarding the future needs and plans of all utilities in the project area relative to repair or replacement of existing utilities or relative to future planned facilities in the area.

#### b. Preliminary Plan Preparation. The ENGINEER will utilize the base maps prepared and the research and data collection included in this section to prepare preliminary plans. The preliminary plans shall, in a minimum, include the following items:

1. Preliminary Plan and Profile of trail design.
2. Drainage facility layout.
3. Preliminary limits of temporary construction easements of impacted parcels (if needed).
4. Utility impacts necessary to accommodate the construction of the proposed public facilities including the relocation of existing utilities.
5. Constraints or conflicts affecting the anticipated cost of the proposed facilities.
6. Preliminary erosion control plan.
7. Preliminary drainage layout.

All plans shall be prepared on 11"x17" size paper. Trail construction plans will be at a general scale of 1" = 40'. Larger scales will be utilized where necessary to communicate details. Trail profiles shall be placed on the same sheet as the corresponding plan view.

- c. Preliminary Opinion of Probable Construction Cost. The ENGINEER will prepare preliminary opinion of total project cost and compare this to the current project budget. The ENGINEER will, if necessary, make recommendations pertaining to modifications in the project in order to address budgetary constraints.
- d. Project Coordination and Public Involvement. The ENGINEER

will coordinate project activities with current development plans in the project vicinity so as to understand the limits of flexibility that can be accomplished within project budget parameters. The ENGINEER understands the public involvement intended for this project will be limited to the required public hearing to be conducted at a City council meeting and coordination with individual property owners. The ENGINEER will if necessary make necessary plan view exhibits to convey project information and will be available to meet & coordinate with City staff and affected property owners. It is anticipated that two meetings will be conducted.

#### 4. FINAL DESIGN AND CONSTRUCTION PLAN PREPARATION

Upon approval by the CITY of the Preliminary Design, the ENGINEER shall prepare construction documents for the PROJECT. The construction documents shall include, but not be limited to, the following information:

- a. Final Design Plans and Specifications - The ENGINEER shall complete the final design, plans and specifications for the improvements for the established scope for the PROJECT and shall furnish a copy of these documents to the CITY for review and approval prior to final acceptance. The design documents will follow the current Iowa Department of Transportation and City of Ankeny's requirements.
- b. SWPPP Preparation – The ENGINEER shall develop a pollution prevention plan to be submitted by the CITY to obtain the necessary permits.
- c. Opinion of Probable Construction Costs - The ENGINEER shall prepare an opinion of the total probable construction costs based on the design developed. Statements of probable construction costs prepared by the ENGINEER represent the best judgment as a design professional familiar with the construction industry. It is recognized, however, that the ENGINEER has no control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the ENGINEER does not guarantee that any actual cost will not vary from any cost estimate prepared by the ENGINEER.

5. BIDDING PHASE

Upon receipt of CITY authorization under the Final Design Phase as described herein, the ENGINEER shall perform the following services:

- a. Construction Contract Documents - The PROJECT will be let through the Iowa DOT, and the ENGINEER shall supply the necessary documents for this process.
- b. Advertising - The ENGINEER shall answer questions from the Iowa DOT Office of Contracts, and coordinate with CITY staff during this phase of services.

C. CONSTRUCTION SERVICES

1. CONSTRUCTION ADMINISTRATION PHASE

Upon award of the initial construction contracts, the ENGINEER shall perform the following administrative services during construction of the PROJECT:

- a. During the construction phases, the ENGINEER shall specify the testing of materials and administrative procedures as per City of Ankeny.
- b. Preconstruction Conferences - The ENGINEER shall arrange and conduct a preconstruction conference with the Contractor and CITY, to review the contract requirements, details of construction, utility conflicts and work schedule prior to construction.
- c. Site Observation – The ENGINEER shall visit the construction site, at such times and with such frequency deemed necessary by the ENGINEER, to (a) observe the progress and (b) determine if the results of the construction work substantially conforms to the drawings and specifications in the Construction Documents. Site Observation does not include observation or administration of the Storm Water Pollution Prevention Plan (SWPPP) which is the sole responsibility of the OWNER (See Article III.G.2., herein).
- d. Contractor Payment Requests - The ENGINEER shall review the requests of the contractor for progress payments and shall approve a request, based on site observations, which authorizes payments and is a declaration that the contractor's work has progressed to the point indicated.



- e. Notification of Nonconformance - The ENGINEER shall notify the CITY of any known work which does not conform to the construction contract, make recommendations to the CITY for the correction of nonconforming work and, at the request of the CITY, see that these recommendations are implemented by the contractor.
- f. Shop Drawings - The ENGINEER shall review shop drawings and other submissions of the Contractor for general compliance with the construction contract.
- g. Change Orders - The ENGINEER shall prepare change orders for approval of the CITY.
- h. Substantially Complete and Final Site Observation - The ENGINEER shall perform a site observation to determine if the PROJECT is substantially complete according to the plans and specifications and make recommendation on final payment for each construction phase.
- i. During the Construction Services Phase, the Project Manager shall confer with the CITY's Project Officer to report PROJECT status. A written progress report shall be submitted and written in such a way that it is suitable for use as a City Council information item.
- j. If the Contractor exceeds the estimated working days in completing construction of the PROJECT for any of the PROJECT lettings, or if change orders or project additions require additional working days, the ENGINEER will be compensated for administration, inspecting and staking services based on established hourly rates and fixed expenses outlined in the Engineer's Standard Fee Schedule (Exhibit "A").
- k. Final Acceptance - It is understood that the CITY will accept any portion of the PROJECT only after recommendation by the ENGINEER. Final acceptance of the PROJECT by the CITY shall not be deemed to release the Contractor from responsibility for insuring that the work is done in a good and workmanlike manner, free of defects in materials and workmanship nor the ENGINEER for liability of design.

## 2. CONSTRUCTION STAKING

The ENGINEER shall be responsible for providing construction stakes for the PROJECT. The construction documents will contain a provision that the ENGINEER will provide one set of stakes for each construction operation. Any staking that is destroyed due to construction that has to be replaced, will be at the Contractor's expense.

### 3. CONSTRUCTION OBSERVATION

The ENGINEER will provide one or more Resident Engineer or Resident Construction Observer for the PROJECT as required during the Construction Phases. If the Contractor requests a waiver of any provisions of the plans and specifications, the ENGINEER will make a recommendation on the request to the CITY for their determination. No waiver shall be granted if such waiver would serve to reduce the quality of the final product. The CITY shall never be deemed to have authorized the ENGINEER to consent to the use of defective workmanship or materials. The Construction Observer will give guidance to the PROJECT during the construction periods, including the following:

- a. Setting and/or checking of lines and grades required during construction.
- b. Observation of the work for general compliance with plans and specifications. Observation does not include observation or administration of the Storm Water Pollution Prevention Plan (SWPPP), if any is required for the site, which is the sole responsibility of OWNER (See Article III.G.2., herein).
- c. Keep a record or log of Contractor's activities throughout construction, including notation on the nature and cost of any extra work or changes ordered during construction.
- d. Resident Services provide the CITY with representation at the job site during the Construction Phases of the PROJECT which results in increasing the probability that the PROJECT will be constructed in substantial compliance with the plans and specifications, and Contract Documents. However, such Resident Services do not guarantee the Contractor's performance. Resident services do not include responsibility for construction means, controls, techniques, sequences, procedures or safety.

### 4. CONSTRUCTION TESTING

The Resident Engineer or Construction Observer shall coordinate the acceptance testing and monitoring according to Iowa Department of Transportation requirements. Concrete field air and slump tests required will be completed by the Resident Engineer or Construction Observer. Moisture and density control tests will be required by the Contractor. Assurance sampling, testing and source inspection required is not expected to be provided by the ENGINEER.



5. RECORD DRAWINGS

Record Documents - The ENGINEER shall furnish reproducible record documents for each PROJECT phase according to City requirements. Such as-builts may contain a waiver of liability phrase in regard to unknown changes made by the Contractor without CITY/ENGINEER approval.

D. ADDITIONAL SERVICES

1. RIGHT-OF-WAY SERVICES

- a. The ENGINEER will provide State of Iowa licensed real estate agents who will negotiate and endeavor to acquire for the CITY all of the necessary easements and/or real property parcels needed for the PROJECT. Mary Ann Carnock and Amy J. Walter are employees of ENGINEER, and are state of Iowa licensed real estate sales persons with SNYDER & ASSOCIATES RIGHT-OF-WAY SERVICES, LLC, Ankeny, Iowa, a State of Iowa licensed real estate broker and a wholly owned subsidiary of ENGINEER. Mary Ann Carnock and/or Amy J. Walter will be designated as "Appointed Agent" and will represent the CITY in a "Buyer Exclusive Agency" capacity in all matters pertaining to the negotiation and acquisition of easements and/or real property for said public improvement project. CITY shall also be a CITY of Appointed Agent.

CITY does hereby request Appointed Agent to select, prepare and complete form documents for use incident as to a residential real estate transaction of four units or less. Such documents shall be limited to: (1) purchase offers or purchase agreements, provided the parties are given written notice that these are binding legal documents and competent legal advice should be sought before signing; (2) groundwater hazard statements; and (3) declaration of value forms.

CITY and ENGINEER acknowledge and agree that the Appointed Agents are required to adhere to Federal and State of Iowa statutes; the rules of the Supreme Court of Iowa as they may pertain to real estate agents; the rules and regulations promulgated by the Iowa Real Estate Commission; and, the Iowa Administrative Rules and regulations in regards to real estate agents' conduct, responsibilities, and duties. Said statutes, rules and regulations will supersede and be paramount to any provision contained herein, anything to the contrary notwithstanding.

- b. The ENGINEER will attend initial project meetings with the representatives of CITY to establish lines of communication

regarding elements of the scope and schedule and to set property acquisition parameters for the PROJECT;

- c. The ENGINEER will complete a parcel file for each property involved with the PROJECT in accordance with the needs of CITY and/or the PROJECT requirements;
- d. The ENGINEER will prepare legal descriptions and acquisition plats for each easement and/or fee title acquisition, if requested by CITY;
- e. The ENGINEER will, if needed, retain and coordinate the services of a licensed, certified appraiser (hereinafter referred to as "APPRAISER") who, subject to the approval of the CITY, will be a subconsultant to ENGINEER. The APPRAISER will prepare appraisals and/or Project Data Books, as needed. The APPRAISERS' work will be reviewed by a second party as approved by the CITY and as required by Local, State and /or Federal Right-of-Way acquisition procedures. The APPRAISER will prepare, sign and furnish to the ENGINEER and CITY appraisal documentation following accepted appraisal principles and techniques in accordance with the Iowa DOT "Appraisal Policy & Procedures Manual". The CITY will review and forward written approval of all findings by the APPRAISER;
- f. The ENGINEER will retain and coordinate the services of an abstractor, who will be a Subconsultant to ENGINEER, who will prepare Certificates of Title for each parcel to be acquired.
- g. The ENGINEER will use acquisition forms and documents provided by CITY or prepare acquisition documents under the direction, review and approval of the CITY'S legal department. Acquisition documents may include, but not be limited to: (1) Offer to Purchase, (2) 10 day-waiver, (3) real estate purchase agreement, (4) Easements, (5) Warranty Deed, (6) title clearing documents as directed by CITY's attorney, and (7) release of tenant interest and leasehold claims;
- h. The ENGINEER will make (through the Appointed Agent) personal and private contacts with each property owner and tenant (the Parties) or their representative to explain the effect of the acquisition, answer questions, present a written offer, and consider counter offers and to make approved offers for administrative settlements. Non-resident property owners will be contacted by certified or registered mail or by U.P.S.



- i. The ENGINEER will make a good faith effort to acquire the necessary property within 90 days after a written offer has been submitted to the owner and tenant. Negotiations will be considered complete upon occurrence of one of the following: (1) the parties accept the offer, (2) the parties accept an administrative settlement, (3) the parties fail or refuse to accept the offer or administrative settlement, and/or (4) in the judgment of the ENGINEER, negotiations have reached an impasse;
- j. The ENGINEER will notify the CITY of every parcel on which negotiations have reached an impasse or which cannot be acquired by negotiated Agreement at the completion of the negotiations phase of the work. If the CITY is to condemn, the ENGINEER will deliver as much of the file to the CITY as is necessary for the CITY'S condemnation attorneys to begin preparation for the condemnation of the parcel. The CITY will provide written notice to the parties that the parcel is being prepared for condemnation. The ENGINEER, when notified in writing by the CITY, will continue in an attempt to negotiate an Agreement after notice has been sent that condemnation is being prepared, but before notice of condemnation has been served. Once notice of condemnation has been served, negotiations will cease unless requested by CITY to continue as additional services.
- k. Right-of-Way Needs - The ENGINEER will specify right-of-way needs for the PROJECT for fee taking or temporary construction easements. The number of impacted parcels and easements will be determined during preliminary design. This will include drainage and/or temporary construction easements adjacent to the existing permanent right-of-way. If other right-of-way is identified in the design phase of the PROJECT, the costs for the development of the plats will be covered under the extra services portion of this Agreement. The CITY will review and approve all right-of-way needs prior to the development of right-of-way documents.
- l. Right-of-Way Acquisition Plats & Legals - The ENGINEER shall develop a written file for each of the parcels and complete a legal description of each parcel and right-of-way plat. The stated purpose of such acquisitions, including the type of interest, construction easement or permanent easement, to be acquired.
- m. Value Determination - The ENGINEER shall complete a market valuation analysis. The market valuation analysis or its equivalent, will be used to determine a formula as the basis of valuation for permanent and temporary easements with a value not to exceed \$10,000. An appraisal or estimate review is not required unless the value is in excess of \$10,000 or have conditions which contributes to a complex taking classification per Iowa DOT criteria.



Any or all appraisals shall be completed in accordance with the CITY'S requirements and shall comply with the requirements as to format for appraisal.

The ENGINEER shall prepare for the CITY the fair market value determination letter for CITY approval on a form provided by the CITY. If an appraisal is required, the ENGINEER shall deliver it to the CITY for review and Fair Market Value approval by City Council prior to commencing negotiations.

- n. Right-of-Way Contract Documents - The ENGINEER will prepare an Acquisition Plan and establish and maintain parcel files. The files will contain an original acquisition plat, summary of proposed acquisition, one copy of the Report of Record Ownership and Liens, correspondence, area computation worksheets, Contract and Conveyance documents, Appraisal/Review Appraisal/Compensation Estimate, Letter of Intent and the 10-day notice.
- o. Right-of-Way Negotiations - The ENGINEER will perform negotiations with property owners along the PROJECT corridor on behalf of the CITY. Once an agreement has been reached between the ENGINEER and a property owner, a copy of the preliminary Contract will be sent to the CITY for approval. If negotiations, in the opinion of the ENGINEER and the CITY, have reached an impasse, condemnation procedures will take effect.
- p. Right-of-Way Acquisition - Upon approval of the offer by the CITY and acceptance of the offer by the property owner, the ENGINEER will proceed with acquiring the property.
- q. The CITY will or have completed the following:
  - 1. All Reports of Record Ownership and Liens.
  - 2. Names and addresses of the titleholders.
  - 3. Examples of land sale contracts and conveyance documents.
  - 4. Legal title clearing responsibilities, payment and closing duties.
- r. Condemnation: The CITY will notify the ENGINEER if services are required for condemnation and the costs such services will be by amendment to the Agreement.

## 2. ENVIRONMENTAL WETLANDS REVIEW

- a. Wetland Delineation - The ENGINEER will provide a Wetland Delineation. The Wetland Delineation will be performed to

determine the upper boundaries of wetland areas on the project site. The ENGINEER will review United States Geological Survey topographic maps, National Wetland Inventory maps, Soil Survey of Polk County, Iowa, and aerial photographs as part of a preliminary data search. An on-site visit will be performed to gather data pertaining to wetland vegetation, wetland hydrology, and hydric soils. Field work will be conducted in accordance with procedures outlined in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual. The Engineer will provide copies of the Wetland Delineation Report summarizing the findings of the preliminary data search and the jurisdictional wetland delineation.

E. EXTRA SERVICES

A contingency fund under Scope of Services will be established in the Agreement for Extra Services. If these funds are not adequate for Extra Services, an Amendment to the original Agreement will be developed for Council action.

The CITY may request Extra Services from the ENGINEER included in the Scope of Services as outlined but without a specific known need or amount. Extra Services may include, but not be limited to, additional design, survey and right-of-way work as required and will be paid out of the Extra Services fund.

F. CHANGES IN SCOPE OF SERVICES (CONTINGENCIES)

Changes in Scope of Services may include, but are not limited to, expanding the scope of the PROJECT and work to be completed; requesting the development of various documents; or requesting additional work items that increases the Engineering Services and corresponding costs. Upon initiation of Extra Services, the ENGINEER will submit the estimated cost. Such costs will be based on the current hourly rates and fixed expenses as outlined in the Engineer's Standard Fee Schedule (as shown in Exhibit "A").

If at any time during the work the ENGINEER determines that its actual costs will exceed the estimated actual costs, thus necessitating the use of a contingency amount, the ENGINEER will promptly notify the CITY, in writing, and describe what costs are causing the overrun and the reason. The ENGINEER shall not exceed the estimated actual costs without the prior written approval of the CITY. If the ENGINEER exceeds the estimated actual costs for any reason before the CITY is notified in writing, the CITY will have the right, at its discretion, to deny the use of the contingency amount. The fee amounts will not be changed unless there is a substantial change in the PROJECT time, character, or complexity of the services covered by the Agreement.

For the ENGINEER to receive approval to use Extra Services (contingency fund), the ENGINEER will prepare a change order for CITY approval in the amount



agreed upon for the work. The change order will describe the work and the amount of time needed to complete this work.

G. STORM WATER DISCHARGE COMPLIANCE / HOLD HARMLESS

1. ENGINEER'S Responsibility

In the event the scope of work to be performed under the terms and conditions of this Agreement includes permitting and creation of an initial storm water pollution prevent plan, then and in that event and notwithstanding any provision to the contrary, ENGINEER shall not be responsible or liable for compliance with any storm water discharge requirements at the site other than the preparation of the Notice of Intent for Storm Water Discharge Permit No. 2 applicable to the site and creation of the initial storm water pollution prevent plan for the site.

2. OWNER'S Responsibility

OWNER shall be solely responsible for: a) the submittal of the Notice of Intent; b) the implementation, administration and monitoring of the initial plan; c) making modifications to the initial plan as needed; d) filing the Notice of Discontinuance; and, e) compliance with all NPDES or storm water discharge statutes, rules, regulations or ordinances applicable to the site. Upon OWNER'S request, ENGINEER will include the initial Storm Water Pollution Prevent Plan as a part of the Construction Documents and will require the Construction Contractor in the Construction Contract to assume all of OWNER'S responsibilities set forth in this paragraph.

3. Indemnification

ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold client harmless against all damages, liabilities or costs including reasonable attorneys' fees and defense costs (hereafter "Claims") to the extent caused by ENGINEER'S errors, omissions or negligent acts relating to the preparation of the Notice of Intent or creation of the initial storm water pollution prevent plan. OWNER shall protect, defend, indemnify and hold ENGINEER harmless from any and all Claims caused by or in any manner related to: a) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the site; and/or b) any alleged violation of any NPDES or storm water discharge statute, rule, regulation or ordinance, unless said Claims were primarily caused by the ENGINEER'S own negligent acts. OWNER shall release, waive and otherwise discharge any and all Claims that OWNER may assert against ENGINEER relating, in any manner, to any discharges from the Site and/or any alleged violation of any NPDES or storm water discharge statute, rule, regulation or ordinance except as set forth above.



The covenants and provisions herein shall survive cessation of ENGINEER'S work on the site.

#### **IV. RESPONSIBILITY OF THE CITY**

At its own expense, the CITY shall have the following responsibilities regarding the execution of the Contract by the ENGINEER.

##### **A. PROJECT OFFICER**

The CITY shall name a project officer to act as the City's representative with respect to the work performed under this Agreement. All correspondence with CITY relating to PROJECT shall be directed to the Project Officer and the Project Officer shall be invited to all progress meetings and other meetings called during the PROJECT.

##### **B. PROMPT RESPONSE**

To prevent an unreasonable delay in the ENGINEER'S work, the CITY will examine all reports, drawings, specifications, and other documents and will provide authorizations in writing to the ENGINEER to proceed with work within a reasonable time period.

##### **C. PROJECT REQUIREMENTS**

The CITY shall also furnish the following information: CITY design and construction standards; construction documents of projects within close proximity; as-built construction drawings and storm water calculations for developments adjacent to the PROJECT corridor; known property locations and conditions; zoning or deed restrictions; and permission for access to private property if necessary to perform work.

## V. WORK SCHEDULE

This PROJECT, from design through construction completion, shall be performed by the ENGINEER in accordance with a schedule mutually developed by CITY and ENGINEER. Generally, the schedule for the PROJECTS are described as follows:

- A. After acceptance of the Engineering Agreement by the CITY, and with any specific modifications in scope described by the CITY, the ENGINEER shall design the PROJECT and prepare documents as called for in Article III(B). It is anticipated that the project will be bid through the Iowa DOT process. Plan production will be scheduled toward the April 19, 2011 Iowa DOT letting date.
- B. Upon completion of the PROJECT design with any specific modifications described by the CITY, the ENGINEER shall assist in the Bidding Phase as called for in Article III(C)1.
- C. The ENGINEER shall not be responsible for delays in the schedule which are beyond the ENGINEER'S control.

## VI. COMPENSATION AND TERMS OF PAYMENT

The CITY shall pay the ENGINEER in accordance with the terms and conditions of this Agreement.

### A. BASIC SERVICES

As set forth in Article III(B) the engineering fee will be on the basis of a maximum fixed fee on hourly rates and fixed expenses as outlined in the Engineer's Standard Fee Schedule.

Project Administration	\$10,000
Preliminary Survey	\$9,380
Design and Plan Production	\$53,572
Bid Period Assistance	<u>\$1,488</u>
<b>TOTAL</b>	<b>\$74,440</b>

Anytime the ENGINEER anticipates that actual engineering costs will exceed estimated engineering costs, he shall immediately notify the CITY, in writing, of such proposed increase and the reasons therefore. The CITY shall thereupon review such proposed increase and either accept or reject it.

**B. CONSTRUCTION SERVICES**

As set forth in Article III(C) the engineering fee shall be on the basis of a maximum fixed fee on hourly rates and fixed expenses as outlined in the Engineer's Standard Fee Schedule. The current fee schedule is shown in the attached Exhibit "A". The fees below are based on local funding only. In the event Federal or State of Iowa funds are used, the documentation will be added by amendment.

Construction Administration and Observation	\$35,466
Construction Staking	\$3,408
Plant Monitoring	\$1,896
Record Drawings	\$3,024
<b>TOTAL</b>	<b>\$43,790</b>

**C. ADDITIONAL SERVICES**

Wetland Delineation	\$2,000
Right of Way Services	\$8,568
	<hr/>
	\$10,568
<b>TOTAL</b>	<b>\$128,798</b>

Total fees of services shall not exceed the above amounts without approval of the CITY.

**VII. METHOD OF PAYMENT**

The ENGINEER shall submit billings for Basic, Construction and Additional services to the CITY on a thirty (30) day basis under separate cover and shall be paid by the CITY within fourteen (14) days after approval by the City Council. The CITY shall pay the ENGINEER a percentage of the total fee for each phase or a cost not to exceed the amount shown. .

Billings shall include sufficient documentation to explain the charges. All billings shall be accompanied by a Billings Information Report on a form provided to the ENGINEER by the CITY.

**VIII. TERMINATION OF AGREEMENT**

For Cause - If, through any cause, the ENGINEER shall fail to fulfill in timely and proper manner the obligations under this Agreement, the CITY shall have the right to terminate this Agreement by specifying a date of termination in a written notice to the ENGINEER at least seven (7) working days before the termination date. In this event, the ENGINEER shall be entitled to just and equitable compensation for any satisfactory work completed.



## **IX. CONFLICT OF INTEREST**

No elected official or employee of the CITY who exercises any responsibilities in review, approval, or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects his or her direct or indirect personal or financial interest.

## **X. ASSIGNABILITY**

The ENGINEER shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the CITY.

## **XI. TITLE TRANSFER**

The products of this Agreement shall be the sole and exclusive property of the CITY. Upon completion or other termination of this Agreement, the ENGINEER shall deliver to the CITY machine reproducible copies of any and all materials pertaining to this Agreement. For calculations, etc., on letter or legal size sheets, the copies shall be of a type possible to reproduce on a Xerox-type copier. For maps, drawings, sketches, plans, etc., not on such letter or legal size sheets, a photographically reproduced print on a stable mylar base shall be provided as the machine reproducible copy mentioned above. No sheets shall exceed 11" x 17". The ENGINEER'S reuse of designs under this Agreement is prohibited unless authorized by the CITY. The CITY may reuse the design, but in doing so shall assume all liability for the design.

## **XII. CONFIDENTIALITY**

No reports, information, and/or data given to or prepared or assembled by the ENGINEER under this Agreement shall be made available to any individual or organization by the ENGINEER without prior written approval of the CITY.

## **XIII. INSURANCE**

The ENGINEER shall maintain insurance to protect the ENGINEER from claims under Workmen's Compensation Acts; claims due to personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for which the ENGINEER is legally liable. The amounts and extent of such insurance is as follows:

- |                             |  |
|-----------------------------|--|
| 1. Professional Liability - | \$2,000,000 each claim; \$2,000,000 aggregate      |
| 2. Vehicle Coverage -       |  |
| Bodily Injury               | \$1,000,000 combined single limit (each accident)  |
| 3. Workmen's Compensation - | \$100,000 each accident                            |
| 4. General Liability -      | \$1,000,000 each occurrence; \$2,000,000 aggregate |

## **XIV. ARBITRATION**

Any controversy or claim arising out of this Agreement may, if both parties agree, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

The cost of the arbitration, if any, will be divided equally between the local government and the ENGINEER.

#### **XV. ENGINEER'S RESPONSIBILITY**

The ENGINEER shall be responsible for the professional quality and technical accuracy of all services furnished by the ENGINEER under this Agreement, except for that work provided by CITY. The ENGINEER shall, without additional compensation, correct or revise any error or deficiencies in his work. Approval of the CITY of any such work shall not in any way relieve the ENGINEER of responsibility for the technical accuracy and adequacy of said services. The CITY's review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

#### **XVI. COMPLETENESS OF THE AGREEMENT**

This document contains all terms and conditions of this Agreement and any alteration shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement. There are no understandings, representations, or agreements, written or oral, other than those incorporated herein.

**XVII. ENGINEER'S CERTIFICATION OF REPORT**

The ENGINEER shall place his certification on the Contract Documents, all in conformity with Chapter 114, Code of Iowa.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and the year first above written.

CITY OF ANKENY, IOWA

By \_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

CONSULTING ENGINEER  
SNYDER & ASSOCIATES, INC.

By \_\_\_\_\_  
PRESIDENT



**EXHIBIT "A"**

**SNYDER & ASSOCIATES  
2010-11  
STANDARD FEE SCHEDULE**

Billing Classification/Level	Billing Rate
<b>Professional</b>	
<i>Engineer, Landscape Architect, Land Surveyor, Legal, GIS, Environmental Scientist Project Manager, Planner, Right-of-Way Agent, Graphic Designer</i>	
Principal	\$154.00-164.00 /hour
Lead	\$144.00 /hour
Senior	\$134.00 /hour
VIII	\$128.00 /hour
VII	\$122.00 /hour
VI	\$118.00 /hour
V	\$110.00 /hour
IV	\$98.00 /hour
III	\$90.00 /hour
II	\$82.00 /hour
I	\$69.00 /hour
<b>Technical</b>	
<i>Technicians--CADD, Survey, Construction Observation</i>	
Principal	\$102.00 /hour
Lead	\$98.00 /hour
Senior	\$94.00 /hour
VIII	\$88.00 /hour
VII	\$79.00 /hour
VI	\$72.00 /hour
V	\$66.00 /hour
IV	\$59.00 /hour
III	\$50.00 /hour
II	\$42.00 /hour
I	\$36.00 /hour
<b>Administrative</b>	
<i>Clerical, Computer Programming, Financial</i>	
Principal	\$92.00 /hour
Lead	\$86.00 /hour
Senior	\$82.00 /hour
VIII	\$74.00 /hour
VII	\$69.00 /hour
VI	\$64.00 /hour
V	\$54.00 /hour
IV	\$46.00 /hour
III	\$41.00 /hour
II	\$38.00 /hour
I	\$36.00 /hour
<b>Reimbursables</b>	
Mileage	<i>current IRS standard rate</i>
1-person robotic equipment ( <i>in addition to technical rate</i> )	\$25.00 /hour
Plotter Prints, Blueprints	\$0.20 /s.f.
Mylar Prints	\$2.00 /s.f.
Color Plots	\$2.00 /s.f.
Color Plots - Photo	\$5.00 /s.f.
Color Copies	\$0.50 /ea.
Outside Services	<i>As Invoiced</i>